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CHARLES ELMO

IN THE

Supreme Court of the United States

OCTOBER TERM, 1934

No. 29

ARTHUR MATTSON, Appellant,

v.

DEPARTMENT OF LABOR AND INDUSTRIES OF THE STATE OF WASHINGTON, Appellee.

Appeal from the Supreme Court of the State of Washington.

BRIEF OF THE STATE INDUSTRIAL ACCIDENT COMMISSION OF OREGON AS AMICUS CURIAE, IN SUPPORT OF THE BRIEF OF THE DEPARTMENT OF LABOR AND INDUSTRIES OF THE STATE OF WASHINGTON, APPELLEE.

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Attorney-General of Oregon,

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Assistant Attorney-General of Oregon,

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By permission of the court, this brief is filed by the State Industrial Accident Commission of Oregon, as amicus curiae, in support of the brief of the appellee, the Department of Labor and Industries of Washington.

STATEMENT OF THE INTEREST OF THE STATE INDUSTRIAL ACCIDENT COMMISSION OF OREGON

Prior to the 1925 session of the Oregon legislature, there was no limit of time within which a claimant under the Workmen's Compensation Law of Oregon

might file with the State Industrial Accident Commission of Oregon an application for additional compensation on account of aggravation and appeal to the circuit court of the state if the relief asked in the application were denied: *Chebot v. State Industrial Accident Commission*, 106 Or. 660. In 1925 the Oregon legislature amended the Workmen's Compensation Law requiring applications for additional compensation on account of aggravation, with a right to appeal to the circuit courts, to be filed within one year after the first award of compensation.

Edward Nelson received an accidental injury in November, 1919, for which compensation was allowed by the State Industrial Accident Commission of Oregon. His claim was finally closed in March, 1925. In July, 1932, Nelson filed an application for additional compensation with the State Industrial Accident Commission of Oregon. In this application he alleged there was an aggravation of the injury received by him in 1919.

The State Industrial Accident Commission of Oregon found that there had been no aggravation of Nelson's disability and denied his application. Nelson appealed to the circuit court of the state of Oregon for Multnomah county. The circuit court entered a judgment dismissing Nelson's appeal on the ground that it did not have jurisdiction—the application not having been filed within the time permitted by the Workmen's Compensation Law as amended in 1925. Nelson has

appealed from this judgment to the Supreme Court of the State of Oregon. (*Nelson v. State Industrial Accident Commission.*) Nelson has assigned as grounds for reversing the judgment of the circuit court that he has a vested right to have his claim determined by the statute in force at the time of the injury. It is his contention that to apply the 1925 amendment to his claim would constitute a denial to him of the protection of the Fourteenth Amendment to the Constitution of the United States. He also claims that the application of this amendment to his claim would impair an obligation of contract in violation of the "Federal Constitution" (meaning, it is assumed, in violation of Section 10, Article I of the Constitution of the United States).

The Nelson case is now pending before the Supreme Court of the State of Oregon and has been continued for argument and final disposition until the decision by this court of *Mattson v. Department of Labor and Industries.* The constitutional questions involved in the Mattson case are identical to those raised by Nelson before the Supreme Court of Oregon. The decision of this court in the Mattson case will be decisive of the Nelson case as to such constitutional questions.

STATEMENT OF THE CASE

The appellant, Mattson, received an injury in February, 1927, which was compensable under the Workmen's Compensation Law of Washington. This claim was closed in January, 1928. In May, 1933, he made an application to the Department of Labor and Indus-

tries to have his claim reopened on account of an alleged aggravation of the injury. At the time he received his injury there was no limit of time within which an application for aggravation might be filed. In 1927 the legislature of the state of Washington amended the Workmen's Compensation Law by providing that an application for additional compensation on account of aggravation must be filed within three years after the establishment or termination of compensation. In all claims which had been established or terminated before the amendment became effective, applications for additional compensation on account of aggravation were required to be filed within three years after the effective date of the amendment. The Department of Labor and Industries rejected Mattson's application. On appeal, the Superior Court sustained the department. The Supreme Court affirmed the Superior Court.

Upon appeal to this court, Mattson contends that the application of the 1927 amendment to his claim impairs a contractual right in violation of Section 10, Article I of the Constitution of the United States. He also claims that the application of this amendment to his claim is in violation of his rights under the due process and equal protection clauses of the Fourteenth Amendment to the Constitution of the United States. The State Industrial Accident Commission of Oregon does not agree with these contentions.

PROPOSITION OF LAW I

The 1927 amendment to the Workmen's Compensation Law of Washington is a statute of limitations and is reasonable in its application to the claim of the appellant, Mattson. There is no constitutional limitation upon the authority of a state legislature to enact a reasonable statute of limitations applicable to accrued causes of action.

Graves v. State Industrial Accident Commission, 112 Or. 143, 146.
Sohn v. Waterson, 17 Wall. 596, 599.
Terry v. Anderson, 24 L. Ed. 365, 366 (5 Otto 628).
Evanhoff v. State Industrial Accident Commission, 78 Or. 503, 523.

Argument

At the time the appellant, Mattson, was injured, he Workmen's Compensation Law of Washington contained no limitation of time within which a claimant night file an application for additional compensation n account of aggravation. After his injury, but before ne alleged aggravation came into being, the statute vas amended providing that applications for additional ompensation on account of aggravation must be filed ithin three years after the "establishment or termiation of such injury". As to pending claims, the mendment provided that claimants should have "three ears from the taking effect of this act within which apply for such readjustment". This amendment es-

tablished a three-year statute of limitations. It allowed claimants, who had pending claims, three years within which to file their claims for additional compensation on account of aggravation.

The Workmen's Compensation Law of Oregon is in most respects similar to that of Washington. It creates an exclusive state fund administered by a state department. In discussing the nature of an application for additional compensation on account of aggravation, the Supreme Court of Oregon in *Graves v. State Industrial Accident Commission*, 112 Or. 143, 146, said:

> "As determined in *Chebot v. State Industrial Acc. Comm.*, 106 Or. 660, (212 Pac. 792), the proceeding for additional compensation depends upon whether or not an original application had been filed within three months after the date on which the injury occurred upon which an allowance had been made. Nevertheless, it is a proceeding with a distinction and individuality all its own from a decision in which an independent appeal may be taken to the Circuit Court of the county in which the claimant resides. The selection of the appellate tribunal in this new and distinct proceeding, supplemental though it may be, in a sense, to the original, is controlled by the place in which the claimant resides at the time he appeals."

We know of no provision in the Constitution of the United States which prohibits either the Congress of the United States or a state legislature from enacting a reasonable statute of limitations applicable to accrued causes of action. The question was before this court in *Sohn v. Waterson*, 17 Wall. 596. In this case, the court said (p. 599):

> "A statute of limitations may undoubtedly have effect upon actions which have already accrued as well as upon

> actions which accrue after its passage. Whether it does so or not will depend upon the language of the act, and the apparent intent of the legislature to be gathered therefrom."

In *Terry v. Anderson*, 24 L. Ed. 365, 366 (5 Otto 628), the court said:

> "This court has often decided that statutes of limitation affecting existing rights are not unconstitutional, if a reasonable time is given for the commencement of an action before the bar takes effect. *Hawkins v. Barney*, 5 Pet., 457; *Jackson v. Lamphire*, 3 Pet., 280; *Sohn v. Waterson*, 17 Wall., 596 [84 U. S., XXI, 737]; *Christmas v. Russell*, 5 Wall., 290 [72 U. S., XVIII, 475]; *Sturges v. Crowninshield*, 4 Wheat., 122."

In an early case involving the Oregon Workmen's Compensation Law, Justice McBride of the Supreme Court of Oregon anticipated the need of amendments to the Workmen's Compensation Law of Oregon based upon experience gained in the administration of the law. In *Evanhoff v. State Industrial Accident Commission*, 78 Or. 503, 523, he said:

> "While experience may suggest from time to time changes and amendments, they are in line with twentieth century progress."

Experience has demonstrated to the legislatures of both Washington and Oregon that it is necessary to place a limit upon the time within which a claimant may file an application for additional compensation on account of aggravation, with a right of appeal to the courts. It is obvious that, after a lapse of considerable time, it becomes difficult to determine whether or not

a disability existing at the time an application for additional compensation on account of aggravation is filed has resulted from the original injury or has resulted from a disease or injury which is foreign to the original injury. If the legislature cannot establish a time limit within which such claims must be filed, there will be a great number of claimants who received accidental injuries in their youth attempting to blame such injuries for the infirmities of old age.

In both Oregon and Washington appeals to the courts from the body administering the Workmen's Compensation Law are tried de novo before juries. If this court sustains the contention of the appellant, the Department of Labor and Industries in Washington and the State Industrial Accident Commission in Oregon, for years to come, will be receiving claims for additional compensation on account of aggravation of injuries received before 1925 in Oregon and before 1927 in Washington. It is significant that in both states several such claims have been filed recently.

If the appellant prevails, all applications for aggravation upon claims, prior to 1927 in Washington and prior to 1925 in Oregon, must be tried before a jury in event of an appeal. Such claimants would have a vested right to a jury trial.

Admitting the appellant had a right at the time the 1927 amendment became effective, this right has been barred by a reasonable statute of limitations.

As we will show later, both the Oregon and Washington Workmen's Compensation Laws have granted

continuing jurisdiction to the body administering the law. The Department of Labor and Industries in Washington and the State Industrial Accident Commission in Oregon may reopen claims and grant additional compensation on account of aggravation without any limit of time.

PROPOSITION OF LAW II

The appellant's rights under the Workmen's Compensation Law of Washington are statutory and not contractual. The Workmen's Compensation Law of Washington was enacted under the police power of that state and does not create a contractual relation between a claimant under that act and the Department of Labor and Industries.

Rohde v. State Industrial Accident Commission, 108 Or. 426, 438.

State of Washington v. Vinther, 76 Wash. Dec. 297, 301.

Smith v. State Industrial Accident Commission, 144 Or. 480, 483.

Cudahy Packing Co. v. Parramore, 263 U. S. 418, 423.

Madera Sugar Pine Company v. Industrial Commission, 43 S. Ct. 604, 605.

Argument

The appellant contends that the 1927 amendment to the Washington Workmen's Compensation Law, limiting the time within which a claimant may file an application for additional compensation on account of aggravation, with a right to appeal to the courts, if the relief asked is denied, violates his rights under the Constitution of the United States in two respects: First, it impairs his right of contract under Section 10, Article I; and, second, it violates his rights under the

due process and equal protection clauses of the Fourteenth Amendment.

In order to establish his first proposition that his rights under Section 10 of Article I of the Constitution of the United States are violated, he must show that there is a contract. In his brief the only reference to contractual rights is found upon pages 39 and 40. He claims that he has a contractual right under sections 7713 and 7714, Remington Revised Statutes. The only authority cited is *Peterson v. Pacific Steamship Company* (*Pacific Steamship Company v. Peterson*), 278 U. S. 130. This case involved a construction of section 20 of the Seamen's Act of 1915 as amended by section 33 of the Merchant's Marine Act of 1920. The case does not discuss the nature of any Workmen's Compensation Law or the rights of a workman thereunder.

The appellee has shown that the Workmen's Compensation Law of Washington was enacted by the legislature pursuant to the police power of that state and that the rights of claimants are statutory and not contractual.

The Washington Workmen's Compensation Law is compulsory as to employers engaged in extrahazardous occupations. It is difficult to see how it can be contended that the rights of a workman under such a law arise under contract. The Workmen's Compensation Law of Oregon is similar to that of Washington except that in Oregon an employer engaging in a hazardous occupation may reject the law. In Washington, em-

ployers engaging in extrahazardous occupations do not have this right of rejection.

In discussing the nature of the Workmen's Compensation Law of Oregon, the Supreme Court of that state said in *Rohde v. State Industrial Accident Commission*, 108 Or. 426, 438 (217 Pac. 627):

> "This law (the Workmen's Compensation Law) was enacted under the police power of the state which is a governmental and not a proprietary function: *Los Angeles Gas Co. v. Los Angeles*, 241 Fed. 912. Neither the state nor any of the commissioners claims any proprietary or any individual interest in the fund. Commissioners function as any other public officers operating under state authority." (Parentheses ours.)

The nature of the accident fund of Washington (the fund from which compensation is paid to injured workmen) is stated by the Supreme Court of Washington to be as follows (*State of Washington v. Vinther*, 76 Wash. Dec. 297, 301):

> "In other words, the accident fund is not made up of sums voluntarily *contributed* by the employes engaged in the industries affected, but is a license fee or tax *exacted* and *imposed* upon the industries in furtherance of the state's public policy in caring for workmen injured in industry. While the fund is a trust fund, administered by the state for the benefit of injured workmen, it is in no sense a private fund. *State ex rel. Trenholm v. Yelle*, 74 Wash. Dec. 499, 25 P. (2d) 569."

While discussing the nature of the industrial accident fund of Oregon (the fund administered by the State Industrial Accident Commission for the payment of claims under the Workmen's Compensation Law),

the Supreme Court of Oregon said in *Smith v. State Industrial Accident Commission*, 144 Or. 480, 483 (23 P. (2d) 904, 25 P. (2d) 119):

> "The fund created under the act, from its very nature as well as by express statutory direction, is a trust fund which can be paid out only in conformity with the provisions of the Act. The officers administering the fund are public officers of this state and those who deal with officers of the state are bound to know the extent of their authority."

The right to receive benefits from such funds is purely statutory. It does not arise out of a contract.

In *Cudahy Packing Co. v. Parramore*, 263 U. S. 418, 423, this court said:

> "Workmen's compensation legislation rests upon the idea of status, not upon that of implied contract; that is, upon the conception that the injured workman is entitled to compensation for an injury sustained in the service of an industry to whose operations he contributes his work as the owner contributes his capital,—the one for the sake of the wages and the other for the sake of the profits."

In *Madera Sugar Pine Company v. Industrial Commission*, 43 S. Ct. 604, 605 (262 U. S. 499, 67 L. Ed. 1091), this court said:

> "These acts (Workmen's Compensation Acts of various states) were sustained, in their entirety, * * * upon the broad ground that the state, by reason of its public interest in the safety and lives of employees engaged in such occupations, may provide, in the just and reasonable exercise of its police power, that the loss of earning power sustained by an employee through an industrial accident * * * shall, in effect, be charged against the industry after the manner of casualty insurance, * * *." (Parentheses ours.)

We wish to call the court's attention to the fact that of the states which have Workmen's Compensation Laws only Oregon, Ohio, Nevada, North Dakota and West Virginia have laws similar to that of Washington—a state-managed fund from which compensation is paid in lieu of direct liability by the employer. It is difficult to classify the Wyoming law. All other states and the territories of Hawaii, Puerto Rico, and Alaska have Workmen's Compensation Laws which are entirely different from that of Washington. Under these laws, which differ from the Washington law, the employer is directly liable for the payment of compensation, but may insure this liability with some private insurance carrier. In these states, the effect of the Workmen's Compensation Law has been to extend the common law rule of liability for injuries to workmen. These laws provide that if a workman receives an accidental injury arising out of and in the course of his employment he may recover compensation from his employer according to the schedule contained in the Workmen's Compensation Law, even though his employer was not guilty of negligence. If the employer insures the payment of the liability the employer is relieved of any liability to pay for the injury. In states such as Oregon, Washington and Ohio, the common-law duty of an employer to respond in damages or compensation to an injured workman is extinguished if the employer has complied with the Workmen's Compensation Law. Upon becoming subject to the Workmen's Compensation Law the employer is required to make

contributions to a state fund from which injured workmen are compensated.

The Workmen's Compensation Laws of the various states and territories of the United States are analyzed and digested by states in Jones' Digest of Workmen's Compensation Laws, Twelfth Edition. The nature of the Workmen's Compensation Law of each particular state and territory is discussed under Point 2 of this analysis.

There may be cases in which it has been held that, as between the workmen and the employer's insurance carrier, the rights of the workmen are contractual. Such cases could not arise under a law such as that of Washington.

The Washington Workmen's Compensation Law having been enacted under the police power of that state and any rights of the appellant, Mattson, having been created by statute rather than by a contract, there is no basis for Mattson's contention that the 1927 amendment violates any rights guaranteed him by Section 10, Article I of the Constitution of the United States.

PROPOSITION OF LAW III

The 1927 amendment does not destroy the right of Mattson to recover additional compensation on account of aggravation, it merely removes a remedy; that is, the right to appeal to the Superior Court in the event the Department of Labor and Industries refuses to allow the relief asked in an application for additional compensation on account of aggravation. The Department of Labor and Industries has continuing jurisdiction and may at any time grant additional compensation if it finds there has been an aggravation of the disability suffered by a claimant.

State ex rel. Griffin v. State Industrial Accident Commission, 145 Or. 443, 455.

Subdivision (h), Section 7679, Remington Compiled Statutes of Washington, 1922.

Section 4, Chapter 310, Laws of Washington, 1927, pages 844-845.

Subdivision (c), Section 6632, Oregon Laws, 1920.

Section 5, Chapter 133, General Laws of Oregon, 1925.

Argument

Throughout his brief appellant assumes that the 1927 amendment extinguishes a claimant's right to additional compensation on account of aggravation if an application for such compensation is not filed within the time limited by the amendment. He fails to demonstrate that this is true. Upon authority of

Lynch v. United States, 54 S. Ct. 840, he argues that the 1927 amendment is unconstitutional in that it extinguishes his right to compensation. It is the view of the State Industrial Accident Commission of Oregon that the amendment did not extinguish the right of the claimant to compensation; it merely removed a remedy. If this is true, appellant's argument fails.

Before the 1927 amendment, Subdivision (h) of Section 7679, Remington Compiled Statutes of Washington, 1922, read:

> "(h) If aggravation, diminution, or termination of disability takes place or be discovered after the rate of compensation shall have been established or compensation terminated, in any case the department may, upon the application of the beneficiary or upon its own motion, readjust for further application the rate of compensation in accordance with the rules in this section provided for the same, or in a proper case terminate the payment."

As amended this section reads (Section 4, Chapter 310, Laws of Washington, 1927, pages 844-845):

> "(h) *If aggravation,* diminution, or termination of disability *takes place or be discovered after the rate of compensation shall have been established or compensation terminated, in any case the director of labor and industries, through and by means of the division of industrial insurance, may,* upon the application of the beneficiary, made within three years after the establishment or termination of such compensation, or *upon his own motion, readjust for further application the rate of compensation in accordance with the rules in this section* provided for the same, or in a proper case terminate the payment: *Provided,* Any such applicant whose compensation has heretofore been established or terminated shall have three years from the taking effect of this act within which to apply for such readjustment." (Italics ours.)

A careful study of this section, as amended, shows that the claimant may apply for additional compensation on account of aggravation within three years after the establishment or termination of compensation. If the relief asked in such application for additional compensation on account of aggravation, is denied, the claimant may appeal to the courts as provided in other sections of the Workmen's Compensation Law and have the question determined by the courts. The section also provides: "If aggravation * * * of disability takes place or be discovered after the rate of compensation shall have been established or compensation terminated, in any case the director of labor and industries, through and by means of the division of industrial insurance, may, * * * upon his own motion, readjust for further application the rate of compensation in accordance with the rules in this section provided for the same * * *." There are two circumstances under which additional compensation may be granted: First, upon application of the claimant made within three years; and, second, by the director of labor and industries upon his own motion, without limit of time.

Although the language of the Washington law is somewhat different than that used in the Oregon law, the legal effect is the same. Before the 1925 amendment, the Oregon law read (Subdivision (c), Section 6632, Oregon Laws, 1920):

> "(c) *Re-arrangement of Compensation.* If change of circumstances warrants an increase or re-arrangement

of compensation, like application shall be made therefor. No increase or re-arrangement shall be operative for any period prior to application therefor."

This was amended in 1925 to read as follows (Section 5, Chapter 133, General Laws of Oregon, 1925):

"(c) *Rearrangement of Compensation.* If subsequent to the last award or arrangement of compensation by the commission there has been an aggravation of the disability resulting from an accidental injury, the injured workman shall file with the commission an application for increased compensation, which application shall set forth sufficient facts to show an aggravation in such disability and the degree thereof. Any application for increased compensation for aggravation must be filed within one year from the date of the first award of compensation to the claimant. No increase or rearrangement in compensation shall be operative for any period prior to the application therefor. However, the power and jurisdiction of the commission shall be continuing, and it may, upon its own motion only, from time to time make such modification or change with respect to former findings, orders or awards as in its opinion may be justified, but no appeal from or review of such proceedings shall be had."

There was a minor amendment to this section in 1933 which does not affect any question raised on this appeal.

In *State ex rel. Griffin v. State Industrial Accident Commission*, 145 Or. 443, 455, the court said:

"Construing the workmen's compensation act in its entirety, it is apparent that the legislature in passing it, and the electorate in approving it, did not intend to deprive the commission of the right to readjust or terminate compensation to the injured workman when his condition had changed, subsequent to the commission's award or the judgment of the court."

It is clear that the Washington legislature has conferred continuing jurisdiction upon the Director of Labor and Industries and that he may at any time, upon his own motion, grant additional compensation to an injured workman if he finds that there has been in fact an aggravation of the injury. This may be done after the three-year limitation. As to claims which had been closed before the 1927 amendment became effective, the claimant was given three years within which he might file an application for additional compensation on account of aggravation with a right to an appeal to the courts. After the three-year period, the claimant may petition for relief, but cannot appeal if the relief is denied. The 1927 amendment did not extinguish the claimant's right to additional compensation on account of aggravation; it merely removed a remedy. The amendment amounts to a withdrawal of the consent of the State of Washington to dissatisfied claimants to sue the Director of Labor and Industries.

Instead of being authority for the position of the appellant, *Lynch v. United States*, 54 S. Ct. 840, is authority for the position of the appellee that the amendment is valid. In the Lynch case this court said (p. 845):

> "When the United States creates rights in individuals against itself, it is under no obligation to provide a remedy through the courts. United States v. Babcock, 250 U. S. 328, 331, 39 S. Ct. 464, 63 L. Ed. 1011. It may limit the individual to administrative remedies. Tutun v. United States, 270 U. S. 568, 46 S. Ct. 425, 70 L. Ed. 738. And withdrawal of all remedy, administrative as well as legal,

> would not necessarily imply repudiation. So long as the contractual obligation is recognized, Congress may direct its fulfillment without the interposition of either a court or an administrative tribunal."

If the United States can withdraw a remedy, the State of Washington can do likewise. The legislature of Washington has withdrawn Mattson's right to resort to the courts to enforce his claim for aggravation. It has not removed the power and authority of its agent, the Department of Labor and Industries, to grant any relief which may be due the claimant if he has in fact suffered an aggravation of his injury.

PROPOSITION OF LAW IV

Mattson has no right to appeal to the courts of the State of Washington unless he can point to some provision of the Workmen's Compensation Law of that state granting him such a right. The right to appeal from an order or decision of the Department of Labor and Industries is a statutory privilege which may be withdrawn by the legislature of the state of Washington without violating any rights of a claimant under the Constitution of the United States.

Maddox v. Industrial Insurance Commission, 113 Wash. 137, 140.

Maddox v. Industrial Insurance Commission, 119 Wash. 21, 23-24.

Liimatainen v. State Industrial Accident Commission, 118 Or. 260, 278.

Dragicevic v. State Industrial Accident Commission, 112 Or. 569, 571.

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National Surety Company v. Architectural Company, 226 U. S. 276, 283.

Baltimore and Potomac Railroad Company v. Grant, 25 L. Ed. 231, 232.

Ex parte McCardle, 7 Wall. 506, 514.

Crane v. Hahlo, 258 U. S. 142, 146.

Argument

Mattson attempted to invoke the jurisdiction of the courts of the state of Washington by means of an appeal from the decision of the Department of Labor and Industries.

In *Maddox v. Industrial Insurance Commission*, 113 Wash. 137, 140, the court said:

> "Appellant (the claimant) had no cause of action of which the court had original jurisdiction. *State ex rel. Davis-Smith Co. v. Clausen*, 65 Wash. 156, 117 Pac. 1101, 37 L. R. A. (N. S.) 466, 2 N. C. C. A. 823, 3 N. C. C. A. 599; *State v. Mountain Timber Co.*, 75 Wash. 581, 135 Pac. 645, L. R. A. 1917D 10, 4 N. C. C. A. 811. The commission had exclusive jurisdiction and appellant had only the right to appeal from its order." (Parentheses ours.)

In *Maddox v. Industrial Insurance Commission*, 119 Wash. 21, 23-24, the court said:

> "It is plain from the provisions of our workmen's compensation act that the original jurisdiction * * * rests exclusively in the commission, and that such questions must first be decided by the commission before the courts can be resorted to looking to the further consideration of the merits of such controversies. The manner of bringing such controversies into the superior court is by review in the nature of an appeal from the final decision of the commission, the procedure for which is very simple and clearly pointed out * * *. The jurisdiction of the superior court over such controversies is appellate only, and not original."

In *Liimatainen v. State Industrial Accident Commission*, 118 Or. 260 (246 Pac. 741), at page 278, the Supreme Court of Oregon said:

> "The claimant contends, however, that the Circuit Court has jurisdiction over the subject matter and cites

> numerous authorities to the extent that a voluntary appearance by an adverse party confers jurisdiction. The fallacy of the argument for the claimant is that the Circuit Court has jurisdiction of the subject matter. It is too plain for controversy that if the claimant, ignoring the Commission, had undertaken to enforce her claim for compensation under the Industrial Accident Law by filing it in the Circuit Court in the first instance, no relief could have been granted her. The original jurisdiction over such matters is vested exclusively in the Commission, for the statute says, 'The commission shall have full power and authority to hear and determine all questions within its jurisdiction.' "

The Supreme Court of Oregon has passed upon the nature of the right of a claimant under the Workmen's Compensation Law to appeal to the courts from a decision or order of the State Industrial Accident Commission and has held that the right of appeal is only a statutory favor.

In *Dragicevic v. State Industrial Accident Commission*, 112 Or. 569, 571 (230 Pac. 534), the court said:

> "This is purely a statutory proceeding and he who would appeal must be able to point to an enactment allowing the same. *It is not a matter of right, but only of statutory favor.*" (Italics ours.)

In *Graves v. State Industrial Accident Commission*, 112 Or. 143, 146 (223 Pac. 248), the court said:

> "The plain reading of the statute delineates the measure of his right to appeal and, it being a statutory proceeding, he must conform to the directions thereof in order to give the appellate tribunal jurisdiction of his cause."

In *Demitro v. State Industrial Accident Commission*, 110 Or. 110, 112 (223 Pac. 238), the court said:

> "It is elementary that in acquiring jurisdiction in pursuit of a statutory remedy, the requirements of the enactment must be complied with strictly."

In *Jackson v. State Industrial Accident Commission*, 114 Or. 373, 376 (235 Pac. 302), the court said:

> "The claimant's right to an appeal is a statutory privilege, and he must bring himself within the terms of the statute."

In *Bergerson v. State Industrial Accident Commission*, 121 Or. 314, 320 (253 Pac. 1052), the court said:

> "The power of the court to review the decisions of the Commission in its final disposition of pending claims is limited to the powers expressly conferred by the statute, and there is no provision of the statute giving the courts power to go outside of the record of the Commission for the purpose of determining when an order of the Commission, which on its face appears to be a final order, was or was not final."

An appeal from a decision of the Department of Labor and Industries in Washington being of the same nature as an appeal from a decision of the State Industrial Accident Commission in Oregon, it follows that the right to appeal in Washington, as in Oregon, is a statutory favor and may be withdrawn by the legislature without impairing any right of the claimant under the Constitution of the United States.

In *National Surety Company v. Architectural Company*, 226 U. S. 276, a bond had been executed in Minnesota in 1908. Later the statutes of Minnesota relat-

ing to the enforcement of the bond were changed. The Supreme Court of Minnesota held that the amended statute controlled an action brought upon the bond. It was contended that this was in violation of the Constitution of the United States, in that it impaired an obligation of contract. This court said (p. 283):

> "The decision must turn, we think, upon the familiar distinction between a law which enlarges, abridges or modifies the obligation of a contract, and a law which merely modifies the remedy, by changing the time or the method in which the remedy shall be pursued, without substantial interference with the obligation of the contract itself."

In *Baltimore and Potomac Railroad Company v. Grant* (98 U. S. 398), 25 L. Ed. 231, 232, the court said:

> "But a party to a suit has no vested right to an appeal or a writ of error from one court to another. Such a privilege once granted may be taken away, and if taken away, pending proceedings in the appellate court stop just where the rescinding act finds them, unless special provision is made to the contrary."

In *Ex parte McCardle*, 7 Wall. 506, the court said (p. 514):

> "Without jurisdiction the court cannot proceed at all in any cause. Jurisdiction is power to declare the law, and when it ceases to exist, the only function remaining to the court is that of announcing the fact and dismissing the cause. And this is not less clear upon authority than upon principle."

Crane v. Hahlo, 258 U. S. 142, 146 (66 L. Ed. 514), involved a controversy over damages to property re-

sulting from the construction of an elevated viaduct. After many years of litigation, the Court of Appeals of New York held that the construction of the viaduct affected a change of grade, which entitled the administrator of the owner's estate to recover damages. The court held that the board of assessors had jurisdiction to take an award for such damages. In 1918, the legislature of New York passed an act making the decision of the board of assessors, upon being confirmed by the board of revision of assessments, final and denying the property owner the right to appeal to the courts which existed at the time the viaduct was under construction. The case was appealed to this court upon the theory that an application of the 1918 amendment to an existing controversy was repugnant to the Constitution of the United States and void on the ground that it offended Section 10, Article I, in that it impaired an obligation of contract and violated the equal protection and due process clauses of the Fourteenth Amendment. The contentions in that case were identical to those in our case. After discussing an earlier case of this court in which it held that the claimants had no common law right to recover damages to the property, the court said (p. 146):

> "The origin of the right is thus wholly statutory, an act of grace by the legislature, as if 'consulting the interests of morality', so that there is nothing in the nature of a contract in it, and therefore there is nothing in the case for the contract impairment clause of the Constitution to operate upon. The first contention of the plaintiff in error cannot be sustained."

The court held there had been no violation of a constitutional right.

In Washington and Oregon, original jurisdiction in compensation claims is vested in the administrative body created to administer the Workmen's Compensation Law. The courts have only appellate jurisdiction. In such a proceeding the trial court sits as a special tribunal. The right to appeal to the courts from a decision of the Department of Labor and Industries is a statutory privilege which may be withdrawn without violating any constitutional rights. Mattson had no vested right to appeal from the decision of the Department of Labor and Industries to the courts of the state of Washington. The effect of the 1927 amendment being only a withdrawal of Mattson's right of appeal to the courts, the amendment did not violate any right granted him by the Constitution of the United States.

PROPOSITION OF LAW V

Mattson's rights being statutory, he has no vested right to proceed under the law as it existed at the time of his injury. He must proceed under the law as it has been amended.

State ex rel. v. Industrial Commission of Ohio, 125 Ohio St. 341, 181 N. E. 476, 478, 479.

Marchuk v. Pittsburgh Terminal Coal Corporation, 106 Pa. St. 249, 161 Atl. 771.

Robinson v. McHugh, 158 Wash. 159, 291 Pac. 330, 332.

Bailey v. School District No. 49, 108 Wash. 612, 185 Pac. 810.

Vincent v. Allerton House Company, 256 N. Y. 522, 177 N. E. 25.

City of Chicago v. Industrial Commission, 292 Ill. 409, 127 N. E. 46, 47.

Arnold & Murdock Co. v. Industrial Commission, 314 Ill. 251, 145 N. E. 342, 343.

Argument

State ex rel. v. Industrial Commission of Ohio (125 Ohio St. 341) 181 N. E. 476, involved five original proceedings in mandamus to require the payment of compensation. Boswell was injured in 1916. In 1930 he filed an application for modification of award (which is similar to our application for additional compensation on account of aggravation). The other four cases were similar. After these five claimants had been injured, the Workmen's Compensation Law was amended to provide that no change in or modification of a final award could be made after ten years from the last payment or ten years after the injury in cases where no compensation ever had been paid (p. 477). This amendment became effective on July 8, 1931. The contention of the claimant was as follows (p. 478):

> "It is claimed that the recognition of relator's injury as compensable, and the allowance of his application for award, gave him a vested right to compensation for such impairment of his earnings as developed from his injury, which right cannot be impaired or affected by subsequent legislation. It is urged that, if the amended section is remedial in character, and is construed as a statute of limitations, it does not provide a reasonable length of time within which to file a supplemental application prior to its effective date and would therefore be unconstitutional; and further that the statute would not be of uniform operation as applied to all claimants coming under the same classification. It is further urged that under the statute all the Industrial Commission could do upon the hearing of plaintiff's original claim was to determine whether he was entitled to participate in the state insurance fund, and that, when it found in the affirmative, he thereby became vested with the right to such compensation as

would appear due him in the future for actual impairment of his wages resulting from such injury, and that that could not be ascertained until a time when he would actually sustain such impairment. Prior to the amendment involved in this action, there was in the statute no prescribed limitation except as to the time of filing the original claim for benefits. * * * The only question presented is whether the amended statute is valid in so far as it affects claims filed prior to its enactment."

After stating the contention of the relator (claimant) that he had a vested right "which no statute can divest or modify", the court said (p. 478):

"This contention loses sight entirely of the nature of the right involved. It is not a common-law right, but one solely of statutory creation under authority of section 35 of article II of the state Constitution. The award made pursuant to the statute had no relation to common-law negligence."

The court further said (p. 478):

"The jurisdiction of the Industrial Commission is continuing only because the statute made it so. It could have been originally provided otherwise. It could have been made to continue for a stated period. The authority, having been conferred by statute, may by it be modified or withdrawn."

On page 479, the court said:

"The fact that an application for a modification of award had been filed, and was pending at the time of the passage of the amended section, does not affect the question. Whatever rights existed were by virtue of the statute and were the same whether an application, for which the statute makes no provision, was or was not filed."

The application for a writ of mandamus was denied in each of the five cases.

This Ohio case goes further than is necessary in our case to hold that Mattson is barred from appealing from the order denying his claim for additional compensation on account of aggravation. In our case the alleged aggravation did not occur until the 1927 amendment became effective. (See p. 14, appellant's brief.) The Supreme Court of Ohio held that though an application for modification of an award (that is, for additional compensation on account of aggravation) had been filed, and was pending at the time of the passage of the amended section, such pending claim was barred by the amendment limiting the time within which such an application might be filed.

In *Marchuk v. Pittsburgh Terminal Coal Corporation*, 106 Pa. St. 249, 161 Atl. 771, the question arose as to whether an amendment to the Workmen's Compensation Law, barring a petition for review of compensation if filed more than one year after the time of last payment of compensation, applied to pending claims. The claimant was injured March 22, 1927. The last payment was made in 1928. In 1930, he filed a petition to review the agreement fixing the amount of compensation. This amounted to a claim for additional compensation on account of aggravation. The section under which he sought to proceed was amended on April 13, 1927, limiting to one year the time within which a petition to review his claim might be filed. The claimant contended that, having been injured "prior to the approval of the amendment", the limitation is not applicable to his claim. The court quoted with ap-

proval the decision of the lower court in which it was held that the amendment limiting to one year the filing of a petition to review " 'relates to procedure and applies to pending cases and is not confined to accidents which occur after its passage and approval'."

In *Robinson v. McHugh* (158 Wash. 159), 291 Pac. 330, 332, the appellant was injured in April, 1929, and elected to sue the respondents, as provided in the Workmen's Compensation Law at the time of the accident. The respondents were alleged to be negligent third parties. After the injury but before the action was commenced, the Workmen's Compensation Law was amended in such a way as to bar the action. The court said (p. 332):

> "All that was given to the workman when injured by the negligent act of a third party was the statutory right of election to sue such third party for such injury. (This being a right which had theretofore been taken away from him.) * * *
>
> "The sole question remaining, then, is as to the affect of the 1929 amendment on accidents which had happened prior to June 12, 1929, the date on which the 1929 amendment took effect, no action having been brought prior to that date."

The court quoted with approval from *Bailey v. School District No. 49*, 108 Wash. 612, 185 Pac. 810 (p. 333):

> " 'The appellant had no vested right, prior to judgment, in a policy of legislation which entitled him to insist that the policy be maintained for his benefit'."

The court then said that the right to sue a negligent third party was a statutory right. It further said (p. 333):

> "Where a tort action can be *brought only by virtue of a statute*, there can be no vested right therein, and the Legislature may take away the right at any time. That it was the intention of the Legislature to take away the right of action can hardly be questioned. * * * We can reach no other conclusion than that this action, not having been brought prior to June 12, 1929, is effectually barred by the statute of 1929, and the demurrer was, therefore, properly sustained."

In *Vincent v. Allerton House Company* (256 N. Y. 522), 177 N. E. 25, the Court of Appeals of New York held: An amendment to the Workmen's Compensation Law forbidding a reclassification of a claim by the State Industrial Board, unless such reclassification is made within one year after the occurrence of the accident, applies to pending claims. The court said:

> "We think that this subdivision was intended to have application in respect to a reclassification of all injuries, whether previously or subsequently occurring; that it affected the remedy and not the right; * * *."

In two decisions, the Supreme Court of Illinois has shown the limits of the power of the legislature to alter a workmen's compensation law in its effect upon pending claims. In the first of these decisions, *City of Chicago v. Industrial Commission* (292 Ill. 409) 127 N. E. 46, 47, it was held that an amendment to the Workmen's Compensation Law, relating to procedure, applies to pending claims. The workman was killed in 1918. The judgment of the circuit court, on appeal, was

entered on June 10, 1919. The case was appealed to the Supreme Court in February, 1920. The appeal section of the Workmen's Compensation Law was amended effective July 1, 1919. At the time the judgment was entered in the circuit court, the Workmen's Compensation Law provided that the case should be taken to the Supreme Court by writ of error, on certificate of the trial judge that the cause was a proper one to be reviewed by the Supreme Court. The 1919 amendment provided that in appeals under the Workmen's Compensation Act, the judgment of the circuit court " 'shall be reviewed only by the Supreme Court upon a writ of error which the Supreme Court in its discretion may order to issue'." The application for a writ of error was made beyond the time permitted under the 1919 amendment. The court held that under the Illinois practice, a writ of error in the Supreme Court "is the beginning of a new suit". The court said (pp. 46, 47):

> "This court has repeatedly held that the law is well settled that there can be no vested right in any particular remedy, method or procedure, and 'that, while the general rule is that statutes will not be so construed as to give them a retrospective operation unless it clearly appears that such was the legislative intention, still, when the change merely affects the remedy or the law of procedure, all rights of action will be enforceable under the new procedure, without regard to whether they accrued before or after such change in the law, and without regard to whether suit had been instituted or not, unless there is a saving clause as to existing litigation.' * * *
>
> "There can be no question, under these authorities, that this amendment merely affected practice and procedure, and that, as there is no vested right in practice

> and procedure, the writ of error after July 1, 1919, could only be sued out in accordance with the provisions of the statute as amended."

The second Illinois case is *Arnold & Murdock Co. v. Industrial Commission* (314 Ill. 251) 145 N. E. 342, 343. The workman, Jacobs, received an injury in 1915 for which he was granted compensation. In February, 1916, he was granted a pension for life at the rate of $19.13 a month. On appeal this award was confirmed by the circuit court. Upon an appeal to the Supreme Court the judgment of the circuit court was affirmed. In 1921 the Workmen's Compensation Law was amended, authorizing the employer to petition for a review of a claim on the ground that the disability had decreased or ended. At the time the award was made in 1916, the Workmen's Compensation Law did not permit a review of such an award. The effect of the 1921 amendment was to grant to the commission continuing jurisdiction as provided in the Washington and Oregon Workmen's Compensation Laws. The court held that the grant of compensation to the claimant was a judgment. The court said (p. 343):

> "No one has a vested right in a public law, but the Legislature may repeal or amend all legislative acts not in the nature of contracts or private grants. Such repeal or amendment, however, cannot have the effect of extinguishing rights which have been acquired under the law. * * * a judgment is a vested right of property and cannot be destroyed or diminished by a retroactive statute. * * *
>
> "When the award to Jacobs was made and confirmed by final judgment it became a vested right in him."

These two cases show the limits of the power of the legislature, in dealing with pending claims under a Workmen's Compensation Law. If the claim has been reduced to an award or judgment, and the commission does not have continuing jurisdiction at the time the judgment or award is entered, the legislature cannot at some future time empower the commission to alter such award. The legislature may amend the Workmen's Compensation Law and set up a new method of procedure for enforcing claims which have not been reduced to a final award or judgment. A new method of procedure affects all questions which have not been finally disposed of. Mattson's right to increased compensation for aggravation had not been reduced to judgment before the 1927 amendment became effective. He must proceed under the law as amended.

The State Industrial Accident Commission of Oregon believes the decision of the Supreme Court of Washington should be affirmed for the following reasons: Mattson's rights being statutory rather than contractual, no right guaranteed him by Section 10, Article I of the Constitution of the United States, has been violated. Admitting that he had a vested right under the Workmen's Compensation Law of Washington this right has been barred by a reasonable statute of limitations—the 1927 amendment. Mattson's right to compensation for aggravation still exists. The Department of Labor and Industries has continuing jurisdiction and may, if it finds a claimant has suffered an

aggravation, grant additional compensation beyond the three-year period established by the 1927 amendment. The effect of the amendment is to withdraw a remedy, a statutory right which may be withdrawn by the legislature which granted it. Mattson has no vested right to proceed under the Washington Workmen's Compensation Law as it existed at the time of his injury. He must proceed under the law as it existed at the time he filed his application for additional compensation on account of aggravation. The decision of the Supreme Court of Washington should be affirmed.

Respectfully submitted,

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